

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8433 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PRAKASH @ PINKU RAMESHBHAI CHANDNANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8433 of 2002
MS SUBHADRA G PATEL for Petitioner No. 1
MR MK PATEL, AGP for Respondent No. 1-3
-

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu
has challenged his detention order dated 12.7.2002, by

which he has been detained as a "dangerous person", under the Prevention of Anti Social Activities Act. Along with the detention order, he has been supplied with the grounds of detention.

2. In the grounds of detention, there is a reference to six cases and the activities of the petitioner are highlighted, such as theft, so as to detain him as a dangerous person. It is also mentioned that the petitioner is keeping dangerous weapons with him. The statements of the witnesses are recorded with regard to the offence and the authority, after having been satisfied, has passed the order of detention against the petitioner. By filing this petition, the petitioner has challenged the order of detention on various grounds.

3. Learned Advocate Ms.Subhadra Patel, appearing for the petitioner detenu, submitted that, at the relevant time, the petitioner was already in judicial custody, yet the authority has detained him under preventive detention. Learned Advocate has relied upon the decision of the Apex Court in the case of Amritlal & ors. v. Union Government and ors., reported in AIR 2000 SC 3675, wherein in paragraphs 4, 6 and 7, it has been observed as under:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but off-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416: (AIR 1986 SC 2090): 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated

against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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"6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090: 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... .."

4. In paragraph 7 of the grounds of detention, the detaining authority has mentioned that the petitioner is in judicial custody in connection with criminal cases being CR Nos.101/2002 and 128/2002. It is also mentioned that the petitioner may be released on bail at any time on preferring application before the competent Court and thereafter he may again continue with his illegal activity. However, the detaining authority has not mentioned as to how he has come to the conclusion that the petitioner may prefer application and may be released on bail. The authority should have at least given some more particulars as to on what basis the authority has reached the said conclusion. In the instant case, there is nothing to show that even the bail application was

moved by the petitioner. Considering the said aspect and in view of the decision of the Apex Court as above, the order of detention is required to be quashed and set aside.

5. In the result, the petition is allowed. The order of detention dated 12.7.2002 passed against the detenu is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)
Sreeram.